

Assembly Bill No. 101

Passed the Assembly September 9, 2011

Chief Clerk of the Assembly

Passed the Senate September 8, 2011

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2011, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add Article 19.5 (commencing with Section 8430) to Chapter 2 of Part 6 of Division 1 of Title 1 of the Education Code, relating to child care.

LEGISLATIVE COUNSEL'S DIGEST

AB 101, John A. Pérez. Child care: family child care providers: bargaining representative.

(1) Existing law authorizes employees of public schools to form, join, and participate in the activities of an employee organization for the purpose of representation on matters of employer-employee relations, including terms and conditions of employment.

The Child Care and Development Services Act, administered by the State Department of Education, requires the Superintendent of Public Instruction to administer child care and development programs that offer a full range of services for eligible children from infancy to 13 years of age.

This bill would authorize family child care providers, as defined, to choose whether to be represented by a single provider organization, as defined, that would be designated pursuant to a specified petition and election process overseen by the Public Employment Relations Board or a neutral 3rd party designated by the board.

The bill would require the State Department of Social Services and the State Department of Education, with the assistance of specified state departments and agencies, and their contractors and subcontractors, to make specified information regarding individual family child care providers available to provider organizations and would require the provider organization requesting the information to bear the costs of collecting the information.

The bill would authorize a certified provider organization to perform various functions, including meeting with state regulatory agencies and engaging in various types of negotiation on matters within a specified scope of representation with the Department of Personnel Administration, in consultation with the Superintendent and other state agencies that administer programs of publicly funded child care. The bill would prohibit provider organizations

from calling strikes and from interfering with, intimidating, restraining, coercing, or discriminating against a family child care provider because the family child care provider joins or refuses to join a provider organization. The state, as defined, also would be subject to the latter prohibition.

(2) Existing law, the Budget Act of 2011, identifies AB 101 as a bill providing for appropriations related to the Budget Bill, to take effect immediately.

This bill would provide that, notwithstanding the Budget Act of 2011, this act is not a bill providing for appropriations related to the Budget Bill, thereby declaring that this act not take effect immediately.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) Quality, affordable child care is essential to prepare California's children to succeed in school and in life and to allow families to work and contribute to the state's economy with the assurance that their children are safe and well cared for.

(b) There is a need to improve the quality of child care and to reduce turnover in the industry that is charged with providing safe and quality care for children in California. Limited or no employment benefits and low wages can drive dedicated child care providers from the profession. The resulting turnover negatively impacts the quality of child care provided and prevents children from receiving the type of care they require in order to be prepared for, and adapt successfully to, school settings.

(c) Turnover among family child care providers is estimated at 30 to 40 percent per year, five times higher than among teachers in the public school system. Experienced providers are leaving the profession simply because they cannot afford to provide for their own families. Losing a caregiver means children's cognitive and social development is disrupted and parents are left scrambling to find other arrangements.

(d) The supply of quality child care in the market is inadequate to meet the demand in California. In 2010, the state lost nearly 5,700 licensed providers, representing a 13-percent decline in the supply of licensed child care and an elimination of 11 percent or

44,000 licensed slots in these homes. In 2009, there was only licensed capacity to care for 27 percent of children with working parents.

(e) Family child care is affordable and convenient; it is particularly vital to parents of infants and the one in five California workers who work nontraditional schedules.

(f) Family child care providers are a vital part of the child care system. Their role gives them unique insight into how quality, access, and stability could be improved for children and families. But family child care providers lack any formal voice in decisionmaking on issues that shape the child care system and the way they carry out their profession.

(g) To promote higher quality and greater access and stability in the child care system, it is necessary to enact legislation to grant family child care providers the right to choose a representative to negotiate collectively with the state over the operation of the child care system. Permitting family child care providers a formal voice will allow the state to get input from providers and to maximize its return on its investment in child care and will allow providers to advocate to improve the quality, access, and stability of care available to California's children and families.

SEC. 2. Article 19.5 (commencing with Section 8430) is added to Chapter 2 of Part 6 of Division 1 of Title 1 of the Education Code, to read:

Article 19.5. Quality Family Child Care

8430. (a) The purpose of this article is to promote quality, access, and stability in the child care system by authorizing an appropriate unit of family child care providers to choose a provider organization to act as their exclusive representative on all matters specified in this article. It is also the purpose of this article to promote full communication between family child care providers and the state by permitting a provider organization certified as the representative of family child care providers to meet and confer with the state regarding the state's child care system.

(b) This article does not change family child care providers' status as independent business owners or classify family child care providers as public employees.

8430.5. This article shall be known and may be cited as the Quality Family Child Care Act.

8431. As used in this article:

(a) “Certified provider organization” means a provider organization or provider organizations that jointly are certified by the board as the exclusive representative of family child care providers in an appropriate unit after a proceeding under Section 8434.

(b) “Child care subsidy program” means a program established pursuant to this chapter and administered by the department or the State Department of Social Services, or both, to subsidize families in purchasing child care.

(c) “Family child care provider” or “provider” means either of the following:

(1) A family day care home provider, as defined in Section 1596.78 of the Health and Safety Code, who is licensed pursuant to the requirement in Section 1596.80 of the Health and Safety Code.

(2) An individual who meets all of the following criteria:

(A) Provides child care in his or her own home or in the home of the child receiving care.

(B) Is exempt from licensing requirements pursuant to Section 1596.792 of the Health and Safety Code.

(C) Participates in a child care subsidy program.

(d) “Provider organization” means an organization that has all of the following characteristics:

(1) Includes family child care providers.

(2) Has as one of its main purposes the representation of family child care providers in their relations with public and private entities in California.

(3) Is not an entity that contracts with the state or a county to administer or process payments for a child care subsidy program.

(e) “Public Employment Relations Board” or “board” means the Public Employment Relations Board established pursuant to Section 3541 of the Government Code. The powers and duties of the board described in Sections 3514.5, 3520.5, and 3541.3 of the Government Code, and the respective implementing regulations, shall apply, as appropriate, to this article to the extent those procedures are not inconsistent with the procedures specified in this article. If any provision of this article is the same or

substantially the same as that contained in Chapter 10 (commencing with Section 3500), Chapter 10.3 (commencing with Section 3512), or Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code, it shall be interpreted and applied in accordance with the judicial interpretations of the provision in those statutes.

8431.5. The state action antitrust exemption to the application of federal and state antitrust laws is applicable to the activities of family child care providers and their representatives authorized under this article.

8432. Family child care providers have the right to form, join, and participate in the activities of provider organizations of their own choosing for the purpose of being represented in all matters specified in this article. Family child care providers have the right to refuse to join or participate in the activities of provider organizations, except that a certified provider organization may charge family child care providers who receive payment from a child care subsidy program a fair share fee pursuant to Section 8436.

8432.5. Family child care providers are not public employees, and this article does not create an employer-employee relationship between family child care providers and the state or any public or private nonprofit entity for any purpose, including, but not limited to, eligibility for health or retirement benefits or vicarious liability in tort. This article does not alter the status of a family child care provider as a business owner, an employee of a family, or a contractor.

8433. This article does not alter the rights of families to select, direct, and terminate the services of family child care providers.

8433.5. (a) Within 10 days of receipt of a request from a provider organization, the State Department of Social Services shall make available to that provider organization information regarding family child care providers described in paragraph (1) of subdivision (c) of Section 8431, including each provider's name, home address, mailing address, telephone number, electronic mail (e-mail) address, and license number.

(b) Within 30 days of receipt of a request from a provider organization, the department, with the assistance of the State Department of Social Services and any state department or agency, or its contractor or subcontractor, in possession of the relevant

information, shall collect information regarding family child care providers, including each provider's name, home address, mailing address, telephone number, electronic mail (e-mail) address, unique provider identification number, including license number, if applicable, and whether or not the provider has participated in a child care subsidy program in the previous six months and shall make that information available to the provider organization. The provider organization shall bear the reasonable costs of collecting the information described in this subdivision if that information has not been previously collected.

(c) A provider organization under this article shall be considered a day care organization for purposes of subdivisions (b) and (c) of Section 1596.86 of the Health and Safety Code. All confidentiality requirements applicable to recipients of information pursuant to Section 1596.86 of the Health and Safety Code apply to provider organizations and shall apply also to protect the personal information of family child care providers as defined in paragraph (2) of subdivision (c) of Section 8431. Information provided pursuant to this section shall be used only for the purpose of organizing and representing family child care providers.

8434. (a) An appropriate unit of family child care providers, as defined in subdivision (g), may designate, in accordance with the provisions of this article, the provider organization, if any, that shall be its exclusive representative. The board shall certify a provider organization designated by an appropriate unit of family child care providers as the exclusive representative of those providers.

(b) Requests for elections, challenges, competing claims, requests for intervention, petitions for elections for unit modifications, and requests for decertification shall be filed with, received, and acted upon by the board.

(c) At any point after the provider organization is certified as an exclusive representative and without complying with the requirement of a one-year waiting period, a certified provider organization may file with the board a petition to expand an existing unit of providers based on a showing of interest by 30 percent of the providers to be added to the existing unit.

(d) The board may designate a neutral third party to act on any of the requests filed with the board under subdivision (b) or (c).

(e) The provider organization that presents a petition requesting certification shall pay the reasonable costs of verifying the number of family child care providers that have designated a provider organization to act as their exclusive representative.

(f) All provider organizations placed on the ballot shall share equally the cost of an election.

(g) A unit of providers will be considered an appropriate unit if it is a statewide unit and it includes either of the following:

(1) All family child care providers who are licensed pursuant to the requirement in Section 1596.80 of the Health and Safety Code.

(2) All or a reasonable subset of family child care providers who participate in a child care subsidy program.

(h) There shall be no more than one bargaining unit at any time. That unit shall be represented by no more than one certified provider organization.

(i) A certified provider organization shall represent each provider in the represented unit fairly, without discrimination and without regard to whether the provider is a member of the provider organization.

8434.5. The scope of representation shall include all of the following:

(a) The administration of laws and regulations governing licensing for providers.

(b) Joint labor-management committees.

(c) Contract grievance arbitration.

(d) Expanded access to professional development and training opportunities for providers.

(e) Benefits for providers.

(f) Payment procedures for child care subsidy programs.

(g) Reimbursement rates for providers participating in a child care subsidy program. At the Governor's option, the scope of representation may exclude this issue from the scope of representation until July 1, 2014.

(h) Expanded access to food and nutrition programs.

(i) The deduction of membership dues and fair share fees.

(j) Any changes to current practice other than those listed in subdivisions (a) to (h), inclusive, that would do any of the following:

(1) Improve recruitment and retention of qualified providers.

- (2) Improve the quality of the programs.
- (3) Encourage qualified providers to seek additional education and training.
- (4) Promote the health and safety of providers and the children in their care.

8435. (a) The Governor, through the Department of Personnel Administration, in consultation with the Superintendent, other state agencies that administer programs of publicly funded child care, and their contractors, as needed, shall meet and confer in good faith regarding all matters within the scope of representation with representatives of a certified provider organization and, before arriving at a determination of policy or course of action, shall consider fully the presentations made by the certified provider organization on behalf of the providers it represents.

(b) As used in this section, “meet and confer in good faith” means that the Governor, through the Department of Personnel Administration, and representatives of the certified provider organization shall have the mutual obligation to meet and confer promptly upon request by either party and continue for a reasonable period of time in order to exchange freely information, opinions, and proposals. The duty to meet and confer in good faith also requires the parties to begin negotiations sufficiently in advance of the adoption of the state’s final budget for the ensuing fiscal year so that there is adequate time for agreement to be reached before the adoption of the final budget and for the resolution of an impasse.

8435.5. (a) If agreement is reached between the Governor, through the Department of Personnel Administration, and the certified provider organization, they jointly shall prepare a written memorandum of understanding. Any portions of the memorandum of understanding requiring appropriation by the Legislature or statutory or regulatory revisions shall be subject to legislative approval of those appropriations or statutory or regulatory revisions.

(b) A memorandum of understanding between the Governor, through the Department of Personnel Administration, and the certified provider organization is binding on all state departments and agencies that are involved in the administration of child care subsidy programs, and the relevant contractors or subcontractors of those departments and agencies.

(c) An agreement pursuant to this section may provide for binding arbitration of grievances concerning the interpretation, application, or violation of the agreement.

(d) This article does not alter the requirements governing the child care reimbursement system that are set forth in Section 8222.

8436. (a) A certified provider organization shall have the same right to enter into an agreement with the state regarding deduction of membership dues and fair share fees from subsidy payments made to providers, including payments made through state agencies, departments, contractors, or subcontractors, as recognized employee organizations have under Sections 3515.7 and 3515.8 of the Government Code. An agreement to deduct membership dues or fair share fees shall apply only to those providers who receive payment from a child care subsidy program.

(b) The amount of any fair share fee shall not exceed the amount of the dues payable by the members of the certified provider organization. The costs covered by the fair share fee may include all of the following:

(1) The certified provider organization's costs for meeting and conferring with the state.

(2) Contract administration.

(3) Securing for the represented providers improvements in subsidy rates, benefits, payment systems, training opportunities, and other matters related to the family child care system in addition to those secured through meeting and conferring with the state.

(4) Other activities germane to the certified provider organization's function as the exclusive representative of providers.

(c) If the deduction of membership dues or fair share fees for a provider requires action by more than one agency, department, contractor, or subcontractor, the certified provider organization shall establish procedures to ensure both of the following:

(1) The amount of the dues or fees does not exceed the total membership or fair share fee owed by that provider.

(2) The administrative procedures for deducting dues or fees are reasonable.

(d) The state, its agencies and departments, and their contractors and subcontractors shall not be liable in any action by a provider seeking recovery of, or damage for, improper calculation or use of fair share fees.

8436.5. (a) It is unlawful for the state, including its agencies, boards, commissions, departments, public benefit corporations, political subdivisions, contractors, subcontractors, or employees, to do to providers or provider organizations any of the things made unlawful under Section 3519 of the Government Code.

(b) It shall be unlawful for a provider organization to do to the state or to providers any of the things made unlawful under Section 3519.5 of the Government Code.

(c) For purposes of subdivisions (a) and (b), the references in subdivision (e) of Section 3519 of, and subdivision (d) of Section 3519.5 of, the Government Code to “the mediation procedure set forth in Section 3518” shall be deemed to refer to the impasse procedures set forth in Section 8437.5.

(d) The initial determination as to whether charges of unfair practices are justified and, if so, what remedy is necessary to effectuate the purposes of this article shall be a matter within the exclusive jurisdiction of the board.

8437. A provider organization may not direct or call a strike.

8437.5. If after a reasonable period of time the parties fail to reach agreement, the parties may agree to submit unresolved issues to the California State Mediation and Conciliation Service established by the Department of Industrial Relations for mediation, or either party may declare that an impasse has been reached and request the board to appoint a mediator from the California State Mediation and Conciliation Service. A memorandum of understanding reached by means of mediation is subject to appropriation by the Legislature and necessary statutory and regulatory revisions.

SEC. 3. Notwithstanding Section 39.00 of the Budget Act of 2011, this act is not a bill providing for appropriations related to the Budget Bill within the meaning of subdivision (e) of Section 12 of Article IV of the California Constitution and shall not take effect immediately.

Approved _____, 2011

Governor